THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M.No.5498-C of 2006 &
R.S.A. No.2273 of 2006

Date of Decision: 9 -10 - 2006

Balwant Singh **.....Appellant**

v.

State of Punjab and others **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.R.S.Rangpuri, Advocate
for the appellant.

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P.S.PATWALIA, J. (Oral)

The present regular second appeal has been filed by the plaintiff against the judgments of the trial Court and the lower Appellate Court vide which the plaintiff has been awarded 9% per annum interest on delayed payment of Rs.1,15,580/- being the amount of leave encashment due to him and his claim for interest regarding the balance amount of retiral dues has been declined. The appeal suffers from a delay of 6 days. The plaintiff has filed C.M.No.5498-C of 2006 seeking condonation of that delay.

The plaintiff retired as a Naib Tehsildar on 31.3.2000. He has been released his retiral dues as hereunder:-

Amount	Particulars	Date
1,15,580/-	Leave Encashment	17.11.2000
2,10,296/-	Commuted pension	28.3.2001
67,338/-	Arrears of pension	28.3.2001

1,90,707/- Gratuity 9.4.2001

He filed the suit claiming interest at the rate of 18% per annum on the delay in payment of retiral dues.

Upon notice the defendants appeared and filed a written statement admitting that the plaintiff had retired on 31.3.2000. It was, however, stated that the pension case of the plaintiff was sent by office of defendant No.3 vide letter dated 15.11.2000 and received in the office of defendants 1 and 2 on 17.11.2000. The same was returned with certain observations on 4.1.2001 and after complying with the same complete case was received on 12.2.2001. The same was finalised and the payments of pension, commuted pension and retiral dues were sanctioned vide order dated 16.3.2001 and were ultimately paid to the plaintiff on the dates as mentioned hereinabove. The trial Court decreed the suit to the extent that it granted interest at the rate of 8% per annum on the delayed payment of leave encashment. The lower Appellate Court enhanced the rate of interest to 9% per annum with the following observations:-

> "4. The State has not filed any appeal against the order of the trial court and as such, the only question for determination is as to what rate of interest the plaintiff/appellant is entitled to recover. As already mentioned, the trial court in this case allowed interest at the rate of 8% per annum. The present bank rate of interest is very low. Earlier, the courts used to allow interest @ 12% per annum and in some case @ 18% per annum. But, now keeping in view the prevailing bank rate of interest, normally the rate of interest which is allowed is 9% per annum. As such, the trial court should have allowed interest at the rate of 9% per annum on the delayed payment.
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> 5. As far as the grievance of the appellant in the appeal that the trial court should have allowed him interest on other pensionary benefits also, is concerned, in this case, the plaintiff had claimed

mandatory injunction for a direction to the defendants to pay interest on the amount of Rs.1,15,580/- and for releasing the pensionary benefits to the plaintiff i.e. leave encashment alongwith interest. The trial court allowed interest on the amount of Rs.1,15,580/- and also on the leave encashment. As such, whatever claim was made regarding payment of interest, the same was allowed. No claim was there regarding any other pensionary benefits. Therefore, the only modification required in the decree of the trial court, is that instead of interest at the rate of 8% the interest at the rate of 9% per annum should be allowed to the appellant. I accordingly modify the finding of the trial court on issue no.1."

Learned counsel for the appellant argued that in fact he was entitled to the grant of interest on the remaining arrears of pension, commuted pension and gratuity as well. He states that his pension case was delayed as his service book was not completed by the defendants. To substantiate this plea he produced before me an order passed by this Court in Civil Writ Petition No.11171 of 2000. He contended that since the service book of the petitioner had not been completed even upto his retirement, the petitioner had earlier filed Civil Writ Petition No.11171 of 2000. In that case the following order was passed on 1.11.2000:-

"This is a typical case of recurring grievance made by several retired government officials, which we have come across in quite a large number of writ petitions, where processing of the case for grant of pension and other retrial dues is held up because of non-availability of service record.

Written statement filed in this case carries an admission of the fact that service book of the petitioner was received in the office of Commissioner, Ferozepur Division, Ferozepur, in the year 1993, and the same is now not traceable.

For payment of his legitimate dues, the petitioner, according to the averments made in the writ petition, did make representations and he also sent reminder to the concerned authorities but in vain. It is now, only after notice of motion was issued by this Court that the concerned authorities have woken up to discover that the service book is not traceable. This is far from fair.

Service book is merely one piece of office record required for computation and grant of retiral dues payable to a government servant. There is a bulk of other contemporaneous record which would furnish relelvant information needed for settlement of a claim for pension etc. No effort appears to have been made for doing the needful. We feel constrained to make these observations, in view of the large number of cases coming to this court where grievance is made by retired government employees on this score.

Learned Additional Advocate General, appearing on behalf of the State of Punjab, assures us that suitable steps shall be taken for settlement of the claim in this case.

Be that as it may, in large public interest, we direct the respondents to state the number of cases, where service books of employees are not traceable in the office of the Commissioner, Ferozepur Division, and what remedial steps have been taken by the concerned authorities for solving the problem. They shall also submit a report on the circumstances in which the service-book of the petitioner has been lost and fixing responsibility for the same, within two weeks.

For further directions, list again on 22.11.2000.

Copy of the order may be supplied to the learned Additional Advocate General, Punjab, Dasti."

The said writ petition was ultimately decided on 22.11.2000 with the following observations:-

> "Petitioner, who had retired from service on 31.3.2000, has filed this writ petition seeking payment of retiral dues. Written statement dated 24.9.2000 has been filed on behalf of respondents No.1 to 6. It has been clarified that in Ferozepur Division there is no similar case of loss of service book of any other employee.
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> Learned Additional A.G. appearing on behalf of the State of Punjab reports that substantial payment has been made to the petitioner on account of General Provident Fund, Leave Encashment and Group Insurance. Further he states that remaining claim of the petitioner shall also be settled within a period of three months.
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> In view of the above statement made on behalf of the State of Punjab, we would dispose of this writ petition as satisfied, with liberty to the petitioner to file a fresh petition in case balance payment of pension etc. is not made.
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> The writ petition is disposed of in the above terms."

A reading of the order reproduced hereinabove would show that it was stated before this Court that substantial amounts towards terminal benefits had already been paid to the petitioner, plaintiff in the suit. In this view of the matter the writ petition was disposed of as being satisfied. However, only liberty was granted to the petitioner to file a fresh petition in case balance payment of pension was not made within three months as per the statement made by the State counsel. A reading of the dates reproduced hereinabove would show that balance payments were actually sanctioned on 16.3.2001 and paid in March and April, 2001 in about four months from the date of order of this Court. Since the earlier writ petition filed by the petitioner wherein he had also made a prayer for release of retiral benefits was disposed of as being satisfied and in that writ petition a prayer was

made for awarding interest on earlier payments which was, however, not granted by this Court, I am of the opinion that the plaintiff could not have raised this plea again before the civil Court in the absence of any liberty having been granted to him by this Court. Still further, the petitioner was satisfied with the statement made by counsel for the State in the aforesaid writ petition that some payments had already been released to him and the balance payments would be released within three months. It is in this view of the matter the writ petition was disposed of. Therefore, I find no ground to interfere in the orders passed by the Courts below declining interest to the petitioner on the commuted pension, arrears of pension and gratuity. No substantial question of law arises for determination in this appeal. The appeal as also the application filed for condonation of delay are accordingly dismissed.

(P.S.PATWALIA)
October 9, 2006. **JUDGE**

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